

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

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4 DONNA J. CARLISLE, individually,

5 Plaintiff,

6 v.

7 STATE FARM MUTUAL AUTOMOBILE  
8 INSURANCE COMPANY,

9 Defendants.

Case No. 2:14-cv-00914-APG-VCF

**ORDER REMANDING CASE TO STATE  
COURT**

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11 **I. BACKGROUND**

12 Plaintiff was involved in a motor vehicle accident and incurred medical expenses of  
13 \$20,262.80. (Dkt. #10 at 2:16-18.) Plaintiff recovered \$15,000 from the tortfeasor's insurer. (*Id.*  
14 at 2:20-23.) Plaintiff sought additional funds from her insurer, State Farm Mutual Automobile  
15 Insurance Company ("State Farm"), whose Underinsured Motorist ("UIM") policy at issue in this  
16 case provides \$25,000 in coverage. (*Id.* at 2:11-13.) State Farm offered to pay Plaintiff \$5,000 on  
17 her UIM claim, "in addition to tendering \$5,000 in medical payment benefits." (*Id.* at 2:26-28.)  
18 Plaintiff deemed this amount insufficient, and filed this lawsuit in state court. State Farm  
19 removed this case to federal court on June 11, 2014.

20 The removing party has the burden of proving that removal is proper, and that this court  
21 may properly assert jurisdiction over the parties and dispute. Because State Farm's Petition for  
22 Removal and Statement of Removal did not provide sufficient facts to justify jurisdiction, I  
23 ordered State Farm to show cause why this action should not be remanded to the state court. (Dkt.  
24 #9.) In addition, Plaintiff filed a Motion to Remand. (Dkt. #10.) In her Motion, Plaintiff  
25 stipulates "that the amount in controversy in the instant case does not exceed \$75,000." (*Id.* at  
26 4:3-4.) Plaintiff reports that she attempted to contact State Farm's counsel by telephone and letter  
27 about that stipulation, but State Farm's counsel did not respond. (*Id.* at 4:9-18.)  
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1 Adding to the curiosity of State Farm's counsel's refusal to respond to Plaintiff's counsel,  
2 State Farm has not filed an Opposition to the Motion to Remand. Pursuant to Local Rule 7-2(d),  
3 the "failure of an opposing party to file points and authorities in response to any motion shall  
4 constitute a consent to the granting of the motion." Had State Farm's counsel responded to  
5 Plaintiff's communications, it may have saved me time addressing this issue, and saved the  
6 parties time and money briefing the issue. Nevertheless, I have reviewed the Motion to Remand  
7 and good cause exists to remand this case to state court.

## 8 II. ANALYSIS

9 Federal courts are courts of limited jurisdiction. *Owen Equip. & Erection Co. v. Kroger*,  
10 437 U.S. 365, 374 (1978). "A federal court is presumed to lack jurisdiction in a particular case  
11 unless the contrary affirmatively appears." *Stock West, Inc. v. Confederated Tribes of the Colville*  
12 *Res.*, 873 F.2d 1221, 1225 (9th Cir. 1989). Thus, federal subject matter jurisdiction must exist at  
13 the time an action is commenced. *Mallard Auto. Grp. Ltd. v. United States*, 343 F.Supp.2d 949,  
14 952 (D. Nev. 2004). "Federal jurisdiction must be rejected if there is any doubt as to the right of  
15 removal in the first instance." *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992) (citing  
16 *Libhart v. Santa Monica Dairy Co.*, 592 F.2d 1062, 1064 (9th Cir.1979)). Courts "strictly  
17 construe the removal statute against removal jurisdiction." *Id.* "The 'strong presumption' against  
18 removal jurisdiction means that the defendant always has the burden of establishing that removal  
19 is proper." *Id.* Remand is proper if the court lacks subject matter jurisdiction. 28 U.S.C. §  
20 1447(c); *see also Aguon-Schulte v. Guam Election Comm'n*, 469 F.3d 1236, 1240 (9th Cir.2006)  
21 ("remand may be ordered either for lack of subject matter jurisdiction or for 'any defect' in the  
22 removal procedure").

23 "[I]n cases where a plaintiff's state court complaint does not specify a particular amount of  
24 damages, the removing defendant bears the burden of establishing, by a preponderance of the  
25 evidence, that the amount in controversy exceeds [\$75,000]. Under this burden, the defendant  
26 must provide evidence establishing that it is 'more likely than not' that the amount in controversy  
27 exceeds that amount." *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 404 (9th Cir. 1996).  
28 *See also Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 689 (9th Cir. 2006) (the removing

1 party bears the burden of establishing that the jurisdictional amount is satisfied at the time of  
2 removal based on competent facts outside the face of the pleadings). Broad allegations that the  
3 jurisdictional amount is met, “‘although attempting to recite some ‘magical incantation,’ neither  
4 overcome[ ] the ‘strong presumption’ against removal jurisdiction, nor satisf[y][the defendant]’s  
5 burden of setting forth, in the removal petition itself, the underlying facts supporting its assertion  
6 that the amount in controversy exceeds” \$75,000. 443 F.3d at 689 (quoting *Gaus*, 980 F.2d at  
7 567); *see also Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 377 (9th Cir. 1997)  
8 (“[R]emoval cannot be based simply upon conclusory allegations where the ad damnum is  
9 silent.”) (internal quotations and citation omitted).

10 “Where a complaint is unclear as to the total amount of damages sought, but alleges only  
11 upper or lower limits or types of damages, a district court is free in its preponderance-of-the-  
12 evidence analysis to make estimations of the amount of damages that could be obtained consistent  
13 with the vague wording of the complaint.” *Elliker v. Contractors Bonding & Ins. Co.*, 3:12-CV-  
14 00438-RCJ, 2013 WL 757621 (D. Nev. Feb. 27, 2013) (*citing Guglielmino v. McKee Foods*  
15 *Corp.*, 506 F.3d 696, 700–01 (9th Cir. 2007)). The Eleventh Circuit Court of Appeals has held  
16 that in making such analyses, district courts can make “reasonable deductions, reasonable  
17 inferences, or other reasonable extrapolations from the pleadings to determine whether it is  
18 facially apparent that a case is removable,” and “may use their judicial experience and common  
19 sense in determining whether the case stated in a complaint meets federal jurisdictional  
20 requirements.” *Roe v. Michelin N. Am., Inc.*, 613 F.3d 1058, 1061–1062 (11<sup>th</sup> Cir. 2010). This  
21 approach is consistent with the Supreme Court’s holding in *Ashcroft v. Iqbal*, 556 U.S. 662, 679  
22 (2009) (“Determining whether a complaint states a plausible claim for relief . . . requires the  
23 reviewing court to draw on its judicial experience and common sense”). *Id.* at fn. 5.

24 Here, there is more than considerable doubt as to State Farm’s right to remove this case  
25 because Plaintiff cannot satisfy this court’s jurisdictional threshold. First, recovery of contractual  
26 damages against State Farm is capped by the \$25,000 limitation on liability in the UIM policy.  
27 Second, Plaintiff’s recovery against State Farm would be reduced by the \$15,000 she recovered  
28 from the tortfeasor’s insurer. Thus, Plaintiff would have to recover significant punitive damages

1 and attorneys' fees in order to exceed the jurisdictional threshold. Based on the allegations in the  
2 Complaint, it seems highly implausible that Plaintiff can prove facts sufficient to justify punitive  
3 damages under Nevada law. Moreover, Nevada law generally disfavors awards of attorneys' fees  
4 absent a contractual provision or bad faith conduct. Finally, and perhaps most persuasively,  
5 Plaintiff has stipulated that she is not seeking in excess of \$75,000 in connection with this  
6 lawsuit.

7 Based on my judicial, legal and practical experience and common sense, I find that the  
8 Plaintiff's complaint does not meet federal jurisdictional requirements. *Roe*, 613 F.3d at 1061-  
9 1062; *Iqbal*, 556 U.S. at 679.

10 **III. CONCLUSION**

11 IT IS THEREFORE ORDERED the case is remanded to the state court from which it was  
12 removed for all further proceedings. The Clerk of the Court is instructed to close this case.

13 Dated: July 31, 2014.

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16 ANDREW P. GORDON  
17 UNITED STATES DISTRICT JUDGE  
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